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cc Docket 96-159

Donna N. Lampert

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September 17, 1996

EX PARTE OR LATE FILED

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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SEP 19 1996

Common Carrier Bureau
Network Service Division
Office of the Chief

Re: Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for
Numbering Administration -- NSD File No. 96-9

Dear Mr. Caton:

On September 16, 1996, Comments were filed on behalf of Continental Cablevision in the above-captioned proceeding. In preparing the document, the Attachment was inadvertently omitted from this filing. Attached please find a copy of the original date-stamped document, and a corrected version with the indicated Attachment. Please substitute these copies in the above-referenced record.

Should you have any questions regarding this matter, please contact me.

Sincerely,



Donna N. Lampert

Enclosures

cc: Service List

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

SEP 17 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Petition for Declaratory Ruling)	
to Impose Competitively Neutral)	NSD File No. 96-9
Guidelines for Numbering)	
Administration)	
)	

**COMMENTS
OF CONTINENTAL CABLEVISION, INC.**

Continental Cablevision, Inc. ("Continental"), by its counsel, hereby submits these Comments on the above-referenced Petition for Declaratory Ruling ("Petition").¹ For the Reasons set forth below, Continental strongly supports the Petition.

INTRODUCTION AND SUMMARY

Continental is the third largest multiple cable system operator in the United States serving approximately 4.2 million customers in roughly 900 franchise areas. In addition, Continental is actively taking steps to become a facilities-based competitive local exchange carrier ("CLEC") for the offering of voice and data services in all of the regions in which Continental operates cable systems. For these reasons, Continental has a strong interest in ensuring that the incumbent local exchange carriers ("ILECs") are not able to undermine the establishment of robust competition for local exchange services through their roles as North American Numbering Plan Administrators.

¹ Petition for Declaratory Ruling of Teleport Communications Group ("TCG"), filed July 12, 1996.

In its experience, Continental has found that the fundamental necessity to have open and equitable access to numbering resources is critical to the success of its efforts to become a successful CLEC. Consequently, Continental strongly supports the instant Petition. As a general matter, Continental is opposed in principle to area code overlay plans, as they can have anticompetitive consequences and invite discrimination. If the Federal Communications Commission ("FCC" or "Commission") decides to permit area code overlays as a solution to code exhaust, however, it should define specifically the circumstances under which overlay plans are permitted.

In particular, the Commission should explicitly preclude the utilization of area code overlay plans until such time as there is implementation of reasonably priced, ubiquitous number portability. In addition, Continental concurs with TCG that its "Number Crunch" proposal will serve the public interest, as it will facilitate the assignment of numbers in an efficient manner. Finally, Continental agrees that the FCC should not authorize a Bell Operating Company ("BOC") to provide in-region interLATA services pursuant to Section 271 of the Telecommunications Act of 1996² unless and until there is a demonstration of full and fair access by CLECs to numbering resources.

ARGUMENT

As the FCC has recognized, telephone numbers are the means by which commercial and residential consumers utilize telephone services.³ In recent years, due to the emergence

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act"), to be codified at 47 U.S.C. § 151 et seq.

³ See Administration of the North American Numbering Plan, Report and Order, 11 FCC Rcd 2588, 2591 (1995).

and growth of competitive and wireless services, consumption of numbers has increased dramatically, resulting in several proposals by Bell Operating Companies ("BOCs") to use area code overlays.⁴ Based upon its experience, Continental submits that these proposals are not only inconvenient and confusing,⁵ but result in impermissible discrimination that can undermine the emergence of robust competition for local exchange services.

In California, Pacific Bell has three times proposed overlay plans, and three times the California Public Utilities Commission ("CPUC") has rejected the proposal in favor of geographic splits.⁶ Undeterred, in part because of the absence of permanent number portability, Pacific Bell has again proposed overlay plans for three additional areas and actively supports an overlay in a fourth area.⁷ This flagrant disregard for the efforts of regulators to promote nondiscrimination underscores the need for a clear national policy directing that overlays must not be implemented absent the availability of permanent number portability that is ubiquitous within the numbering plan area ("NPA").

⁴ See In the Matter of Telephone Number Portability, CC Docket No. 95-116, RM 8535, First Report and Order and Further Notice of Proposed Rulemaking, FCC No. 96-286, (rel. July 2, 1996) ("Number Portability Order") at ¶ 151, n.152.

⁵ Id.

⁶ See MCI v. Pacific Bell, CPUC Decision 96-08-042, Aug. 2, 1996 (415 and 916 NPAs); Air Touch Communications v. Pacific Bell, CPUC Decision 95-08-082 (Aug. 11, 1995) (310 NPA); Local Competition Proceeding, CPUC # 96-08-028, Aug. 2, 1996 (CPUC required implementation of permanent number portability in advance of overlay).

⁷ See Industry Group Meetings for Relief of the 408, 209, and 510 NPAs. On September 13, 1996, Pacific Bell withdrew the overlay proposal for the 209 NPA. City of Burbank v. Pacific Bell, Case No. 96-03-006 (818 NPA).

Similarly, in Massachusetts, the New England Telephone and Telegraph Company ("NYNEX") has proposed overlay plans for the 617 and 508 NPAs.⁸ Significantly, these areas cover the entire 128 LATA. In both California and Massachusetts, each BOC has implemented extraordinary code conversion measures, including a code "lottery" in the 617 NPA.⁹ Indeed, in Massachusetts, NYNEX originally proposed an overlay plan that preserved 7-digit local dialing within the NPA. Following the issuance of the FCC's Interconnection Second Report¹⁰ and a Motion to Strike jointly filed by the New England Cable Television Association and AT&T,¹¹ NYNEX modified its proposal to implement overlays with 10-digit dialing. These overlay plans for 617 and 508 would become effective April, 1998 under the NYNEX plan.

⁸ See Investigation by the Department on its Own Motion to Determine a Review Plan for the 617 and 508 Area Codes, Massachusetts DPU 96-61.

⁹ See NYNEX Extraordinary Central Office Code Conversion for the 617 NPA, March 1, 1996, attached hereto as "Attachment 1." Under interconnection and switched access regimes, carriers must obtain an NXX for each rate center it intends to serve. To avoid accelerated exhaustion of NXX codes, assignment of numbers in blocks smaller than the entire NXX code makes sense. Continental therefore supports the "Number Crunch" proposal as set forth in the TCG Petition.

¹⁰ Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers, CC Docket No. 95-185, Area Code Relief Plan for Dallas and Houston, NSD File No. 96-8, Administration of the North American Numbering Plan, CC Docket No. 92-237, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Second Report and Order, 96-333 (rel. Aug. 8, 1996) ("Interconnection Second Report").

¹¹ Motion of AT&T, AT&T Wireless, and NECTA to Strike the Area Code Relief Proposal Submitted by NYNEX on the Ground that it is Barred by New FCC Regulations and To Set a Date Certain by Which NYNEX Must File Any Revised Testimony, Mass. DPU # 96-91, Aug. 14, 1996.

Despite the potential adverse impact of the NYNEX plan, in litigation regarding the Massachusetts area code proposal before the Massachusetts Department of Public Utilities ("DPU"), NYNEX alleges that its implementation of number portability will alleviate any anticompetitive effects of the 10-digit overlay proposal.¹² According to the Commission's Number Portability Order, permanent number portability is to become effective in the Boston Metropolitan Statistical Area ("MSA") in the first quarter of 1998.¹³ Critically, substantial portions of the 617 and 508 areas are not scheduled for long term number portability in the first quarter of 1998.¹⁴ In fact, it is unlikely that these areas will have permanent number portability available until at least a year or more after such time. Moreover, NYNEX just recently has asserted that its permanent number portability start-up costs will exceed \$400 million, which it will seek to recover from industry pooling and a surcharge of between \$1 and \$2 on consumer bills.¹⁵

Given these circumstances, it is of no consequence that NYNEX alleges that anticompetitive effects of its overlay plan will be alleviated through the deployment of number portability solutions, as the plan would take effect prior to such time. Indeed, unless the Commission acts swiftly and affirmatively to preclude the utilization of area code overlay

¹² See Prefiled Testimony of Tom DeSisto, MA DPU #96-91 at 16.

¹³ See Number Portability Order, supra, at Appendix F.

¹⁴ See NYNEX Responses to Information Requests of the Department of Public Utilities, MA DPU 96-91, Item DPU-NYNEX 1-21.

¹⁵ See In the Matter of Telephone Number Portability, Further Notice of Proposed Rulemaking, CC Docket No. 95-116, RM 8535, NYNEX Comments, filed Aug. 16, 1996 at ii; see also "Phone Companies Call for Customer Surcharge," The Wall Street Journal, September 13, 1996 at B1.

plans until there is permanent number portability, consumers and industry will likely continue to be asked to pay extremely high costs before the benefits of competition are available to them. Putting the cart before the horse in this fashion makes little sense and fails to promote the competitive local service environment that Congress and the Commission have touted.

Indeed, Continental maintains that given the risks of anticompetitive practices and outcomes in the deployment and implementation of overlay plans, the FCC should find that they are inconsistent with the public interest. If, however, overlays are permitted, sound policy dictates that they must follow ubiquitous and reasonably-priced permanent number portability. Accordingly, Continental strongly supports the TCG Petition in this respect.

Finally, Continental agrees that the FCC should not authorize a Bell Operating Company ("BOC") to provide in-region interLATA services pursuant to Section 271 of the Telecommunications Act of 1996¹⁶ unless and until there is a demonstration of full and fair access by CLECs to numbering resources. Under the framework of the 1996 Act, the promise of the provision of interLATA services is the "carrot" that encourages the BOCs to act so as to promote competitive local services. If these BOCs are able to evade in any way the full requirements of a competitive local market, they very well may do so. As such, the FCC should explicitly conclude that unless there is an affirmative showing of fair and equitable access to all numbering resources, it will not authorize such entry under Section 217 of the 1996 Act.¹⁷

¹⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act"), to be codified at 47 U.S.C. § 151 et seq.

¹⁷ 47 U.S.C. § 271.

CONCLUSION

The Commission has already taken several steps critical to the establishment of genuine facilities-based local competition.¹⁸ As both the Congress and the FCC have already recognized,¹⁹ fair and complete access to numbering resources are essential to fulfilling these goals and producing the public interest benefits of competition. To ensure that there continues to be advances towards this goal, the FCC should adopt the proposals set forth in the TCG Petition.


Respectfully submitted,

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Dated: September 16, 1996

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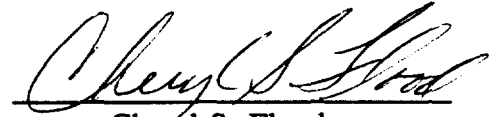
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¹⁸ See e.g., Implementation of Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between local Exchange Carriers and Commercial Mobile Service Providers, CC Docket No. 95-185, First Report and Order, 96-235 (rel. Aug. 8, 1996); Interconnection Second Report, *supra*.

¹⁹ See e.g., 1996 Act, Section 251 (a)(3) ("nondiscriminatory access to telephone numbers"), (e) (numbers shall be available on an "equitable basis"), 47 U.S.C. § 251 (a)(3), (e) (1996); Interconnection Second Report, *supra*, at ¶¶ 101-106. See also Number Portability Order at ¶ 51.

CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 17th day of September, 1996, I caused copies of the foregoing "**COMMENTS OF CONTINENTAL CABLEVISION, INC.**" to be sent first-class mail, postage prepaid, or to be delivered by messenger (*) to the following:


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ATTACHMENT

Memorandum

Date: May 1, 1996

To: All Participants at the March 14th, March 28th and April 18th Industry Meetings on the Massachusetts Area Code Relief

From: New England Central Office Code Administration

Subject: Extraordinary Central Office Code (NXX) Conservation for the 617 NPA

As requested at the April 18th Industry meeting, the Central Office Code Administration group has assembled this document in order to provide you with a better understanding of the Extraordinary Central Office Code Conservation Interim Procedures and how they are intended to work.

Currently, a set of "Interim" Extraordinary Code Conservation Measures are in effect to ensure the availability of NXX Codes throughout the 617 NPA relief planning process. These measures were distributed at the March 14th meeting and went into effect on March 15th. They were put in place on an interim basis, due to the unprecedented demand for NXX codes that we are now experiencing in the 617 NPA. They will remain in effect until the industry is able to adopt a "final" code conservation plan. This "final" conservation plan will remain in effect until 617 NPA relief is available.

The measures described in this document consist of a Monthly Code Rationing and Allocation Process with a provision for a monthly lottery, when necessary. Also, a process review will take place quarterly to make adjustments (when necessary) to the total quantity of codes available.

Additional efforts, which impact the code conservation measures, are the ongoing activities associated with recovering 617 NXX codes that are now being used for special purposes. These activities are in progress and recovered NXX codes will be added to the total available codes for assignment.

This conservation process should allow for a fair and responsible distribution of the remaining 617 NPA codes across all industry participants until a relief NPA plan can be implemented.

With that in mind, please review the following document and provide us by May 23rd with any comments or alternative suggestions on conservation measures for the 617 NPA. We will send any comments to all participants in a memo the week before the June 6th meeting.

Please be prepared to discuss these or any other related CO (617/508 NPA) Code Administration items at our next meeting in Boston on June 6, 1996.

Rationing and Allocation Process

I. Rationing: Defined as a fixed quantity of NXX Codes made available for assignment each month.

The Code Administrator will make available a monthly quantity of Central Office (CO) NXX Codes for Industry Applicants. This monthly quantity was initially established at five (5) codes based on the remaining 101 codes as of 3/14/96.

The initial quantity of codes per month was based on the codes available for assignment divided by the number of months until NPA relief. We are projecting a 24 month relief, which is subject to change.

$$\text{EX: codes available} \div \text{months to relief} = 101 \div 24 = 4.2$$

This number, 4.2, will be rounded up to five (5) per month in anticipation of some NXX Code Recovery activity.

The monthly allocation will be periodically reviewed to determine if it should be increased or decreased. This change will depend on the number of additional codes recovered and the planned implementation date for the 617 NPA relief. The industry will be notified of any changes as they occur.

II. Allocation: Defined as the method for distributing the monthly codes available.

There will be two separate categories of Code Requests. They are Initial Code Requests and Growth Code Requests. Initial Code Requests are first time requests by a code applicant for a code in a particular geographic rate center of the 617 NPA. Growth Code Requests are requests for an additional code in a particular geographic rate center of the 617 NPA, where the requester already has one or more codes assigned to them.

The monthly quantity of codes available for assignment will be distributed as follows:

- 60% of the monthly codes will be designated for Initial Code Requests
- 40% of the monthly codes will be designated for Growth Code Requests
 - If the percentage yields a fraction, the number will be rounded to the nearest whole number.

III. Allocation Guidelines

1. All Code Requests for the current monthly allocation must be received by the Code Administrator, Charleen Cozier-Heard, by 5 PM EST on the second Tuesday of each month.
2. All CO Code Requests must qualify by meeting the requirements of the CO Code Assignment Guidelines (INC 95-0407-008) to be considered for allocation.
3. **ALL GROWTH CODE REQUESTS WILL REQUIRE A FORECAST OF USAGE PLUS VERIFICATION OF UTILIZATION OF EXISTING CODES FOR THAT ENTITY.**
4. There will be a maximum monthly request of 5 codes per applicant/company.
5. A monthly lottery process for the selection of applicants will be held for each category, Initial and Growth, when the number of qualified code applicants exceeds the number of codes available for that month.
6. If the total monthly allocation is not reached in any month for one category, Initial or Growth, then the remaining codes can be used by the other category.
7. If all of the monthly codes are not used in any month, the remaining quantity will be added to the following month's allocation and the 60%-40% rule will apply.
8. When the allotment for the month is depleted, a priority list* will be developed. The code applicants not receiving a code will be placed on the list by their order drawn. These applicants must reapply the following month, but they will be given a priority. Code applicants with more than one request for the month who have already received a code will not be placed on the priority list for the following month. They may submit a new request for the next month.
9. In a given month the code priority list from the previous month will be honored before the new lottery selections are assigned codes.
10. A company/applicant may receive more than one code per month, up to a maximum of five, if all applicants requests have been addressed and there are still spare codes for that month.
11. The rationing process will be reviewed quarterly. Any changes in the total available codes and monthly ration of codes will be made based on additional NXX Codes recovered and/or a change in time (months) for the implementation of the new NPA.

* Priority List - A list of code applicants who will be given a priority in the following month for receiving a code because the previous month's allocation had been used and they did not receive a code.

IV. Lottery Process for selecting the order

- The lottery will be officiated by an impartial 3rd party consultant.
- All qualified applicants in each category will be placed in a cylinder.
- Applicants will be drawn and assigned an alpha character (A, B etc.) associated with that applicant.
- All Alpha letters will then be placed in a respective cylinder - one for Initial codes and one for Growth codes
- The consultant will draw all chips from each cylinder and note the order in which that letter was drawn. Each category will have a separate lottery.
- The chips are then matched to the applicant/company forming List I and List II.

Ex.:

LIST I	
Initial Code Draw	
Month of _____	
1.	Company _
2.	Company _
3.	Company _
.	.
.	.
.	.

LIST II	
Growth Code Draw	
Month of _____	
1.	Company _
2.	Company _
3.	Company _
.	.
.	.
.	.

V. Monthly Code Request Examples

Month 1 - Five (5) codes available. Using the 60%-40% rule, 3 codes for initial, and 2 codes for growth.

Applicants:

Company A	Growth
Company B	Growth
Company C	Initial
Company D	Growth
Company A	Growth
Company B	Initial
Company C	Initial

There are 3 initial codes available, and 3 initial applicants this month. The lottery process is not needed because the number of available initial codes equals the number of initial applicants. Company C received two initial codes because all of the initial codes were not used, and all of the initial applicants had received an initial code. There will not be an initial priority list for initial applicants this month.

List I (Initial)

C
B
C

There are 4 growth applicants and 2 growth codes available this month. The lottery process is used to determine the order and list II shows the companies in the order drawn. Company A was drawn first, and they receive a growth code. Another growth code is available, and all of the growth applicants have not received a growth code, therefore, the next growth applicant is taken from the list, which is Company B. Company B has not received a growth code, therefore they receive a growth code. There are no more growth codes available this month for growth applicants. Only those companies that did not receive a growth code this month are eligible for the Growth Priority list. The Growth Priority list for the following month will have only Company D on it. The second growth request from Company A is not eligible because they were given a growth code this month. Therefore it will be denied, and they will have to submit another request next month.

Lottery Draw:

List II (Growth)

A
B
D
A

Month 2 - Five (5) codes available. Using the 60%-40% rule, 3 codes for initial, and 2 codes for growth.

Applicants:

Company F	Initial	Growth Priority List
Company C	Initial	D
Company F	Initial	
Company H	Growth	

Company D is listed as a result of the Growth Priority list created from the previous month.

There are 3 initial codes available, and 3 initial applicants this month. The lottery process is not needed because the number of available initial codes equals the number of initial applicants. Company F received two initial codes because all of the initial codes were not used, and all of the initial applicants had received an initial code.

List I (Initial)

F
C
F

The growth applicants for month 2 follow in the order drawn. There are 2 growth applicants and 2 growth codes available this month. The lottery process is not needed because the number of available growth codes equals the number of growth applicants. Company D and Company H each receive one growth code.

Growth Priority List
D

List II (Growth)
H

Month 3 - Five (5) codes available. Using the 60%-40% rule, 3 codes for initial, and 2 codes for growth.

Applicants:

Company D	Initial
Company B	Growth

There are 3 initial codes available, and 1 initial applicant this month. Company D will get an initial code, and there will be two extra initial codes to be used for the growth applicants if needed.

List I (Initial)
D

There is 1 growth applicant and 2 growth codes available this month. Company B will get a growth code, and there will be an extra growth code to use for the initial applicants if needed.

List II (Growth)
B

All of the applicants from both groups received codes this month and 3 unused codes remain. These unused code quantity will be added to the monthly allotment for August.

Month 4 - Eight (8) codes available. The 3 codes left over from July were added to the monthly allotment of 5. Using the 60%-40% rule, there are 5 (4.8) codes for initial, and 3 (3.2) codes for growth.

Applicants:

Company J	Growth
Company Q	Initial
Company B	Growth
Company A	Growth
Company F	Initial
Company C	Growth
Company Z	Growth
Company K	Initial
Company C	Growth
Company B	Growth
Company B	Growth

There are 5 initial codes available, and 3 initial applicants this month. The lottery process is not needed because the number of available initial codes is more than the number of initial applicants. Companies Q, F, and K will get initial codes this month. There are 2 initial codes left, and they will be used for this month's growth applicants if needed.

List I (Initial)

Q
F
K

There are 8 growth applicants and 3 growth codes available this month. The lottery process is used to determine the order. Company J was drawn first, and they get a growth code. Another growth code is available, and all applicants have not received a growth code, so take the next applicant from the list, Company B. Company B has not received a growth code, so they get a growth code. There is one growth code left, and Company A is next. They have not received a growth code this month, so they get the last growth code.

Lottery Draw:

List II (Growth)

J
B
A
C
C
Z
B
B

There are no more growth codes available this month, but there are 2 initial codes available this month. The extra initial codes are now used for the growth applicants. Using the above mentioned method, assign a code to Company C. Company C is also in the next position. They cannot have the last available code because they have already received a growth code for this month, and all of the growth applicants have not received one yet. The last growth code will go to Company Z.

The code allotment for this month is depleted and 3 applicants remain; 1 from Company C and 2 from Company B. There will not be a growth priority list from August because both Companies B and C were given a growth code this month. Therefore, those requests will get denied, and they will have to reapply next month.

Month 5 - Five (5) codes available. Using the 60%-40% rule, 3 codes for initial, and 2 codes for growth.

Applicants:

Company J	Growth
Company J	Growth
Company J	Growth
Company J	Growth
Company J	Growth
Company K	Growth

There are 6 growth applicants this month, and no initial applicants. All of the codes available this month will be used for the growth applicants. Using the lottery process, Company J was drawn first and they get a code. Another code is available, and all applicants have not received a code, therefore select the next applicant from the list, Company J. Since company J has already received a code, they cannot receive another code until all of the companies have received 1 growth code. Company J appears 3 more times in a row, but each time they do not get another code until all other growth applicants have received one code. Company K is picked on the sixth draw, and they get a code. There are more codes available, and only Company J left. Assign Company J the remaining 3 codes.

	Lottery Draw:
List I (Initial)	List II (Growth)
NONE	J
	J
	J
	J
	J
	K

There are no more codes available this month for growth applicants, and there is one remaining growth applicant, Company J. They will not go on the priority list, because they received a growth code this month. Therefore, the code request will be denied and they will have to submit another request next month.

Questions on the process may be directed to:

Charlean Cozier-Heard 508-624-2476
Jim Szarka 212-285-7347
Frank Salatel 212-285-7340